

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

---

Ex parte: DUNCAN M. KITCHIN

MAILED

JUN 21 2007

U.S. PATENT AND TRADEMARK OFFICE  
BOARD OF PATENT APPEALS  
AND INTERFERENCES

Application No. 09/841,657

---

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

---

This application was received at the Board of Patent Appeals and Interferences on June 4, 2007. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matters requiring attention prior to docketing are identified below.

**EXAMINER'S ANSWER**

**Evidence of Record**

On June 27, 2006, an Examiner's Answer was mailed in response to the Appeal Brief received April 14, 2006. A review of the Examiner's Answer reveals that it is not in compliance with the Manual of Patent Examining Procedure (MPEP). In the "Evidence Relied Upon"

Application No. 09/841,657

(section 8) the Examiner indicates “[n]o evidence is relied upon by the examiner in the rejection of the claims under appeal.” In accordance with MPEP § 1207.02, the “Evidence Relied Upon” (section 8) should include:

**(8) Evidence Relied Upon**

A listing of evidence relied on (e.g., patents, publications, admitted prior art), and in the case of non-patent references, the relevant page or pages.

Correction of the record is required.

Accordingly, it is

**ORDERED** that the application is returned to the examiner for:

- 1) issue and mail a PTOL-90 citing the references used to reject the claims on appeal; and
- 2) for such further action as may be appropriate.

BOARD OF PATENT APPEALS  
AND INTERFERENCES

  
\_\_\_\_\_  
PATRICK J. NOLAN  
Deputy Chief Appeals Administrator  
(703)308-9797

PJN/dpv

Trop, Pruner & Hu, PC  
1616 S. Voss Road, Ste 750  
Houston, TX 77057-2631